

National Aeronautics and Space Administration

1832.202-1

services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value in excess of \$500,000.

[62 FR 4467, Jan. 30, 1997, as amended at 65 FR 46628, July 31, 2000]

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55768, Oct. 29, 1996, unless otherwise noted.

1832.006-2 Definitions.

The Associate Administrator for Procurement is the Agency remedy coordination official.

Subpart 1832.1—Non-Commercial Item Purchase Financing

1832.111 Contract clauses for non-commercial purchases.

1832.111-70 NASA contract clause.

The contracting officer shall insert the clause at 1852.232-79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

Subpart 1832.2—Commercial Item Purchase Financing

1832.202-1 Policy. (NASA supplements paragraph (b))

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts. (see 1832.402).

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1832.206 Solicitation provisions and contract clauses. (NASA supplements paragraph (g))

(g)(2) The installment payment rate shall be that which is common in the commercial marketplace for the purchased item. If there is no commonly used rate, the contracting officer shall determine the appropriate rate. In no case shall the rate exceed that established in the clause at FAR 52.232-30.

Subpart 1832.4—Advance Payments for Non-Commercial Items

1832.402 General. (NASA supplements paragraph (e))

(e)(1) The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is \$25,000,000 or less, and for all increases to such contracts over \$25,000,000 previously approved by the Headquarters Office of Procurement as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(a) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I contracts. A class deviation has been signed, effective through September 30, 2000 (for SBIRs) and September 30, 2001 (for STTRs), authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement (Code HK).

(b) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorizes advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

(e)(2) All advance payment authorization requests, except those authorized

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by 1832.402(e)(1)(B), shall be coordinated with the installation Deputy Chief Financial Officer.

[61 FR 55768, Oct. 29, 1996, as amended at 63 FR 14040, Mar. 24, 1998]

1832.406 Letters of credit. (NASA supplements paragraph (b))

(b)(1) Each installation is considered a contracting agency for the purposes of this requirement.

1832.407 Interest. (NASA supplements paragraph (d))

(d)(1) Advance payments without interest are authorized.

1832.409 Contracting officer action.

1832.409-1 Recommendation for approval.

1832.409-170 NASA procedure for approval.

In addition to the items listed in FAR 32.409-1, requests for Headquarters approval of advance payments (see 1832.402(e)(1)) shall include the following information:

(a) Name of the cognizant NASA Headquarters program or staff office;

(b) Name and phone number of the contracting officer or negotiator;

(c) A copy of the proposed advance payments clause;

(d) If a profit/fee is contemplated, the factors considered in determining the profit/fee (see subpart 1815.404-470);

(e) Information justifying the adequacy of security to cover the maximum advance payment amount at any time outstanding.

[61 FR 55769, Oct. 29, 1996, as amended at 62 FR 36721, July 9, 1997; 63 FR 9967, Feb. 27, 1998]

1832.410 Findings, determination, and authorization. (NASA supplements paragraph (b))

(b) Generally, the format in FAR 32.410 should be used, tailored as follows:

(i) In format subparagraph (a)(2), use the phrase "Advance payments (In an amount not to exceed \$* * * at any time outstanding)" in all determinations and findings. The phrase means the maximum unliquidated dollar

amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(ii) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account if no special bank account is required.

(iii) Use format subparagraph (a)(6), and not (a)(7) or (a)(8).

(iv) At the end of format paragraph (b), use "is in the public interest."

(v) In format paragraph (c), use the phrase "(the amount at any time outstanding)" in all determinations and findings.

1832.412 Contract clause. (NASA supplement paragraphs (e) and (f))

(e) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs.

(f) See 1832.412(e).

[63 FR 14040, Mar. 24, 1998]

1832.412-70 NASA Contract clauses.

When the clause at FAR 52.232-12 or its Alternates II or V are used, insert the clause at 1852.232-70, NASA Modification of FAR 52.232-12.

[63 FR 14040, Mar. 24, 1998]

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501-1 Customary progress payment rates. (NASA supplements paragraph (a))

(a) The customary progress payment rate for all NASA contracts is 85 percent for large business, 90 percent for small business, 95 percent for small disadvantaged business, and 100 percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. The contracting

officer shall insert the applicable percentage in paragraphs (a) and (b) of the clause at FAR 52.232-16.

1832.501-2 Unusual progress payments.

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the use of unusual progress payments.

[63 FR 14040, Mar. 24, 1998]

1832.502 Preaward matters.

1832.502-2 Contract finance office clearance.

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the actions at FAR 32.502-2, except the Associate Administrator for Procurement (Code HK) is the approval authority for any deviations addressed in FAR 32.502-2(b).

[63 FR 14040, Mar. 24, 1998]

1832.502-4 Contract clauses.

1832.502-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.232-82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

1832.503 Postaward matters.

1832.503-5 Administration of progress payments. (NASA supplements paragraph (c).)

(c)(i) If the contractor requests it and the contracting officer approving individual progress payments agrees, the administration of progress payments may be based on the overall contract agreement. Under this method, the contractor must include a supporting schedule with each request for a progress payment. The schedule should identify the costs applicable to each order.

(ii) The contracting officer may treat a group of orders as a single unit for administration of progress payments if each order in the group is subject to a

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uniform liquidation rate and under the jurisdiction of the same payment office.

[65 FR 31102, May 16, 2000]

1832.504 Subcontracts. (NASA supplements paragraph (c))

(c) Unusual progress payments to subcontractors shall be approved in accordance with 1832.501-2.

Subpart 1832.7—Contract Funding

1832.702 Policy.

1832.702-70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are deliverable, only the condition in paragraph (a)(3) of this section applies):

(1) The total value of the contract (including options as defined in FAR subpart 17.2) is \$1,000,000 or more.

(2) The period of performance under the contract overlaps the succeeding fiscal year.

(3) The funds are not available to fund the total contract value fully at award.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if the conditions in 1832.702-70(a) (1) through (3) are met and the initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as adequate funding becomes available.

(d) The procurement officer, with the concurrence of the installation Comptroller, may waive any of the conditions set forth in paragraphs 1832.702-70 (a) through (c). The procurement officer shall maintain a record of all such approvals during the fiscal year.

(e) A class deviation from the conditions set forth in paragraphs 1832.702-70 (a), (b) and (c) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) Program

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(through September 30, 2000) and Phase II of the Small Business Technology Transfer (STTR) program (through September 30, 2001). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

[61 FR 55768, Oct. 29, 1996, as amended at 63 FR 14040, Mar. 24, 1998]

1832.704 Limitation of cost or funds.

1832.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c)(1) of the clause at 1852.232-77, Limitation of Funds (Fixed Price Contract), the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds in a specified amount for continued performance;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled to stop work in accordance with paragraph (b) of the clause at 1852.232-77, Limitation of Funds; and

(ii) Any costs expended beyond the amount specified in paragraph (a) of the clause at 1852.232-77, Limitation of Funds, are incurred at the contractor's risk.

(b) Upon determining that the contract will receive no further funds, the contracting officer shall promptly give notice of the Government's decision and terminate for the convenience of the Government.

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

1832.705-270 NASA clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232-81, Contract Funding, in Section B of solicitations and contracts

containing the clause at FAR 52.232-22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The amount obligated for fee in paragraph (b) of the clause should always be sufficient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

Subpart 1832.9—Prompt Payment

1832.906 Contract financing payments. (NASA supplements paragraph (a))

(a) Except as authorized in 1832.908, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that:

(i) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the FEDERAL REGISTER (subject to quarterly revision);

(ii) The contracting officer approves the payment date change, with the concurrence of the installation Financial Management Officer; and

(iii) The contract file includes documentation regarding the value of the consideration and the analysis determining that value.

[61 FR 55768, Oct. 29, 1996, as amended at 64 FR 36606, July 7, 1999]

1832.908 Contract clauses. (NASA supplements paragraph (c).)

(c)(3) When the clause at FAR 52.232-25, Prompt Payment, is used in such contracts with the Canadian Commercial Corporation (CCC), insert "17th" in lieu of "30th" in paragraphs (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii).

[64 FR 5621, Feb. 4, 1999]

Subpart 1832.10—Performance-Based Payments

1832.1001 Policy.

(a)(i) In determining whether performance-based payments are practical in competitive negotiated acquisitions, the contracting officer should consider the procedural impacts (*e.g.*, proposal evaluation complications, longer evaluations, elimination of the potential for award without discussions, increased proposal information requirements) and the impact on small business competitiveness.

(ii) The contracting officer must obtain approval from the Director of the Headquarters Office of Procurement Contract Management Division (Code HK) to use performance-based payments in competitive negotiated solicitations under \$50M. The request for approval must include an assessment of the practicality of using performance-based payments, as well as the proposed performance-based payments evaluation approach (see 1832.1004(e)(1)(ii)).

[65 FR 31102, May 16, 2000]

1832.1004 Procedures.

(a) See 1815.201(c)(6)(E) for establishing performance bases and payment terms in competitive negotiated acquisitions.

(e)(1)(ii) Use of the price adjustment evaluation technique may require obtaining and analyzing proposal information that is normally not required in NASA firm-fixed-price competitions (see 1815.403-3). When using performance-based payments in competitive negotiated acquisitions under \$50 million, contracting officers should consider the use of alternative evaluation methods, *e.g.*, qualitative evaluation under Mission Suitability or another appropriate factor.

[65 FR 31103, May 16, 2000]

1832.1005 Contract clauses. (NASA supplements paragraph (a))

(a) If the contract is for launch services, the contracting officer shall delete paragraph (f) of the clause at FAR 52.232-32 in accordance with 1832.1009.

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(b)(2) Contracting officers shall not use Alternate I in competitive negotiated acquisitions under \$50 million, unless approval has been obtained to use performance-based payments (see 1832.1001(a)(ii)).

[61 FR 55768, Oct. 29, 1996, as amended at 65 FR 31103, May 16, 2000]

1832.1009 Title.

In accordance with 42 U.S.C. 2465d, NASA shall not take title to launch vehicles under contracts for launch services unless one of the exceptions in the law applies. However, the law does not eliminate NASA's right to take title to other property acquired or produced by the contractor under a contract containing a title provision.

Subpart 1832.11—Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses. (NASA supplements paragraphs (a), (b), and (c)).

(a)(1) NASA does not use the Central Contractor Registration. Use the clause at FAR 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(b) In accordance with FAR 32.1106(b), the use of a nondomestic EFT mechanism is authorized. When a nondomestic EFT mechanism is used, the contracting officer shall replace the paragraph at FAR 52.232-34(c) with a description of the EFT mechanism that will be used for the contract.

(c) The payment office shall be the designated office for receipt of contractor EFT information for all NASA contracts.

[64 FR 18373, Apr. 14, 1999]

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

Sec.

1833.103 Protests to the agency.

1833.104 Protest to GAO.

1833.106 Solicitation provision and contract clause.

1833.106-70 Solicitation provision.

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Subpart 1833.2—Disputes and Appeals

1833.209 Suspected fraudulent claims.

1833.210 Contracting officer's authority.

1833.211 Contracting officer's decision.

1833.215 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55771, Oct. 29, 1996, unless otherwise noted.

Subpart 1833.1—Protests

1833.103 Protests to the agency. (NASA supplements paragraphs (c), (d) and (f).)

(c) An independent review under the provision at 1852.233-70 is available as an alternative to a protest to the contracting officer, but not as an appeal of a protest decision. All independent reviews shall be conducted by the Deputy Associate Administrator for Procurement or designee. Such reviews are different from the Ombudsman Program described at 1815.7001.

(d) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the United States General Accounting Office prior to receipt of an Agency protest decision.

(4) When a potential bidder or offeror submits an Agency protest to NASA to the contracting officer or alternatively requests an independent review, the decision of the contracting officer or the independent review official shall be final and is not subject to any appeal or reconsideration within NASA.

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233-70.

[62 FR 11108, Mar. 11, 1997, as amended at 64 FR 36607, July 7, 1999]